

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00524-00526/2018

DATED THIS THE 12TH DAY OF DECEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C V SANKAR, MEMBER (A)

1. Sri H.S. Basavaraj,
S/o H. Shivanandappa,
Aged about 41 years,
Working as Postal Assistant,
Sub Postmaster,
Naregal P.O. 582 119
Residing at:
No. B2/2, P & T Quarters,
Near Sai Temple,
Gadag – 582 101

2. Smt Pratibha Salamani,
D/o. Shivappa Salamani,
Aged about 38 years,
Working as Sub-Post Master,
Hombal P.O. 582 204
Residing at:
Vivekanandanagar,
Gadag – 582 101

3. Smt. Vanishree V. Joshi,
W/o Vinay Joshi,
Aged about 39 years,
Working as OA (on Deputation)
O/o Supt. Of Post Offices,
Gadag – 582 101
Residing at:
Veerasarvarkar Marg,
Vakeel Chowk,
Gadag – 582 101

.....Applicants

(By Advocate Shri P. Kamalesan)

Vs.

1. Union of India
Represented by its Secretary,
Department of Post,
Dak Bhavan,
New Delhi – 110 001
2. Chief Post Master General,
Karnataka Circle,
Bengaluru – 560 001
3. Post Master General,
N.K. Region,
Dharwad – 580 001
4. Supt. Of Post Offices,
Gadag Postal Division,
Gadag – 582 101

.....Respondents

(By Shri Gajendra Vasu, Counsel for the Respondents)

ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

There is a connected matter in which we have passed an order in O.A. No. 643/2017 dated 08.08.2018 which we quote below:

"Heard. The applicant was appointed as GDS in 1980. Thereafter following a notification dtd.28.07.2002, a selection process was held in which the applicant was held to be surplus in accordance with the prevailing rules.

2. *Now the respondents would say that vide OM No.2/8/2001-PIC dtd.16.05.2001 which mandated that each Dept./Ministry to obtain the approval of Screening Committee for filling up of direct vacancies. Accordingly, the Screening Committee vide order dtd.18.09.2003 approved filling up of unfilled direct recruitment vacancies. The respondents have produced the letters dtd.06.09.2002 and 18.09.2003 as Annexures-R2 & R3 respectively. Pursuant to this, vide communication dtd.08.10.2003, the 2nd respondent sought clearance of vacancies approved by Screening Committee from the Surplus Cell. Thereafter, vide communication dtd.02.12.2003 informed DoPT that as no reply has been received till date, it is presumed that the DoPT has no objection for appointment against the posts cleared by the Screening*

Committee. This is produced by the respondents as Annexure-R4. A copy of the letter dtd.04.12.2003 is produced as Annexure-R5. On 24.03.2004, the surplus list was announced by the 3rd respondent vide Annexure-A2 and the applicant was allotted to Chikodi Division. It indicates that the applicant was already selected.

3. *The respondents at this point will say that under Rule 9 of Appendix 9 to the Postal Volume IV mandates undergoing of compulsory practical training for 10 days for the selected candidates before joining as Postman. It may be noted in this connection that the applicant had been all the while from 1999 doing nothing other than a job of Postman for 23 years. But while the training was organized and appointment letter issued, it came up to 27.04.2004. In the meanwhile, the new pension scheme came into effect on 01.01.2004. Therefore, the question is whether the applicant will be eligible to be counted for the old pension scheme or for the new pension scheme.*

4. *This matter is covered by Annexure-A8 judgment of Ernakulam Bench and Annexure-A9 judgment of this Tribunal itself and Annexure-A10 of Delhi High Court judgment which are in the same way indicating that if there had been delay due to no fault of the applicant and on the fault of the respondents, then the time will be subtracted from the time available to the applicant. It must be considered in this connection that even though appointment order was issued after the training on 27.04.2004, all the formalities required were completed as early as 2003 at the latest. The only issue was the delay on the part of the DoPT replying to the communication which was pursuant to the selection in 2002. Therefore, the applicant is eligible to be considered under the old pension scheme and not under the new pension scheme.*

5. *The OA is thus allowed. No costs."*

2. Apparently the issue arising there and here is the same and therefore the applicants are eligible for the same benefits. The OA is allowed.
3. At this point of time, the learned counsel for the respondents raises a question that there is a question of delay and which had not been explained. Therefore, the benefit, if at all to be given to the applicants, will commence only on the date of filing of the OA and not before. At this point of time the learned counsel for the applicants submits that it should be from at least 3 years prior to

the date of filing. But then the cumulative effect of limitation cannot be dated back retrospectively as has been held in several other cases also. This contention of the applicants is rejected. Benefit, if at all made available, will be made available from the date of the OA and not from the retrospective date.

4. The OA is allowed to this limited extent. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No.170/00524-00526/2018

Annexure-A1: Copy of the RTI information dated 04.04.2018

Annexure-A2: Copy of the representation of the applicant No. 1 dated 09.04.2018

Annexure-A3: Copy of the SSPO letter dated 18.04.2018

Annexure-A4: Copy of the RTI information dated 22.03.2018

Annexure-A5: Copy of the representation of applicant No. 2 dated 09.04.2018

Annexure-A6: Copy of the SSPO letter dated 18.04.2018

Annexure-A7: Copy of the SSPO letter dated 22.11.2014
Annexure-A8: Copy of the representation of applicant No. 3 dated 10.04.2018
Annexure-A9: Copy of the SSPO letter dated 18.04.2018
Annexure-A10: Copy of the Central Administrative Tribunal, Ernakulam Bench order dated 15.02.2016 in O.A. No. 20/2015
Annexure-A10: Copy of the Central Administrative Tribunal, Bangalore Bench order in O.A. No. 1610/2015 dated 11.11.2016

Annexures with reply statement

Annexure-R1: Copy of the DoPT OM on optimization of direct recruitment to civilian posts
Annexure-R2: Copy of the DO letter dated 06.09.2002
Annexure-R3: Copy of the circular dated 18.09.2003
Annexure-R4: Copy of the letter dated 02.12.2003
